THE SUPREME COURT OF THE
UNITED STATES

OCTOBER TERM, 1940

No. 164

SAM A. WILSON,

Petitioner,

vs.

JOHN N. THELEN,

Respondent.

RESPONDENT THELEN'S
OPPOSING PETITION FOR
CERTIORARI

JOHN N. THELEN
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# THE SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1940

## No. 164

SAM A. WILSON,

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# RESPONDENT THELEN'S BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

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## I

## DEFECT IN PARTIES RESPONDENT WHICH PRECLUDES GRANTING OF WRIT OF CERTIORARI

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The trial court in its findings of fact and decree adjudicated that the respondent Thelen and one of the defendants, F. J. Buscher, were the owners of the oil leasehold interests involved herein (I Tr. pp. 107A-118).

This decree and the findings of fact and conclusions of law were affirmed by the Supreme Court of the State of Montana on March 18th, 1940 (III Tr. pp. 675-680).

The decree was in favor of respondent Thelen and defendant Buscher and was joint, as appears upon the face of the record (III Tr. pp. 675-680).

On June 18th, 1940, petition for writ of certiorari to the Supreme Court of Montana was filed in this court. It seeks to have the decision of the Supreme Court of Montana reviewed only so far as respondent Thelen was concerned.

As appears from the record no notice of the filing of the petition was served upon respondent Thelen. Defendant Buscher, although a party to the decree, which was joint and indivisible, was not made a party to these proceedings.

Section 350, Title 28, U. S. C. A. page 376, applies alike to writ of error, appeal, or writ of certiorari. Hence, defendant Buscher cannot now or ever be made a party hereto.

Under Rule 38, subdivision 3, no notice of the filing of the petition was given to respondent Thelen within the time allowed by the rules of this court. It was not known until August 5th, 1940, that the petition had been filed. (See Clerk's letter dated August 5th, 1940 in file in the above entitled case).

The petition, brief in support thereof and record have never been served upon defendant Buscher. Counsel for respondent Thelen have no authority to appear for and

do not appear for defendant Buscher.

Unless all the parties to a judgment or decree, joint as to any of them, are before this Court proceedings to review the judgment or decree of the Court below will be dismissed. The test as to whether the judgment or decree is joint is: Does the face of the record reveal a joint judgment or decree?

This Court will go no further than to determine that fact.

Hartford Acc. & Ind. Co., v. Bunn,
285 U. S. 169, 76 L. Ed. 685;

Haseltine v. Central National Bank,
183 U. S. 130, 46 L. Ed. 117.

We adopt the reasoning of this Court in Hartford Acc. & Ind. Co., v. Bunn, 285 U. S. 169, 76 L. Ed. 685, applicable, by conversing the rule, to the question herein involved and which is as follows:

> "The judgment is joint in form and no reason appears why either or both of the parties defendant therein might not have appealed to this Court and submitted claims of error for our determination. In matters of this kind we may not disregard the face of the record and treat the judgment as something other than it appears to be. So to do probably would lead to much confusion and uncertainty.
>
> Haseltine v. Central National Bank, 183 U. S. 130, 131, 46 L. Ed. 117, 118, 22 S. Ct. 49—'We have frequently held that a judgment reversing that of the court below, and remanding the case for further proceedings, is not one to which a writ of error will lie . . . While the judgment may dispose of the case as presented, it is impossible to anticipate its ultimate disposition. It may be voluntarily discontinued, or it may

happen that the defeated party may amend his pleading by supplying some discovered defect, and go to trial upon new evidence. To determine whether, in a particular case, this may or may not be done, might involve an examination, not only of the record, but even of the evidence in the court of original jurisdiction, and lead to inquiries with regard to the actual final disposition of the case by the Supreme Court, which it might be difficult to answer. We have, therefore, always made the face of the judgment the test of its finality, and refused to inquire whether, in case of a new trial, the defeated party would stand in a position to make a better case. The plaintiffs in the case under consideration could have secured an immediate review by this court, if the court as a part of its judgment of reversal had ordered the Circuit Court to dismiss their petition, when, under Mower v. Fletcher (114 U. S. 127, 29 L. Ed. 117, 5 S. Ct. 799) they might have sued out a writ of error at once.'

Norfolk & S. Turnp. Co. v. Virginia, 225 U. S. 264, 268, 269, 56 L. Ed. 1082, 1085, 1086, 32 S. Ct. 828. The question was: To which state court should the writ of error run? This Court said—'The difference between the cases, however, is not one of principle, but solely depends upon the significance to be attributed to the particular form in which the action of the court below is manifested. In other words, the apparent want of harmony between the rulings of this court has undoubtedly arisen from the varying forms in which state courts have expressed their action in refusing to entertain an appeal from or to allow a writ of error to a lower court and the ever-present desire of this court to so shape its action as to give effect to the decisions of the courts of last resort of the several States on a subject peculiarly within their final cognizance. A like want of harmony resulted from similar conditions involved in determining what was a final judgment of a state court susceptible of being reviewed

here, and the confusion which arose utimately led to the ruling that the face of the judgment would be the criterion resorted to as the only available means of obviating the great risk of confusion which would inevitably arise from departing from the face of the record and deducing the principle of finality by a consideration of questions beyond the face of the alleged judgment or decree which was sought to be reviewed. The wisdom of that rule as applied to a question like the one before us is, we think, apparent by the statement which we have made concerning the rule in the Crovo Case (220 U. S. 364, 55 L. Ed. 498, 31 S. Ct. 399) and the previous decisions.'

See Estis v. Trabue, 128 U. S. 225, 229, 32 L. Ed. 437, 438, 9 S. Ct. 58; Schlosser v. Hemphill, 198 U. S. 173, 175, 49 L. Ed. 1000, 1002, 25 S. Ct. 654; Louisiana Nav. Co. v. Oyster Commission, 226 U. S. 99, 101, 57 L. Ed. 138, 140, 33 S. Ct. 78; Second Nat. Bank v. First Nat. Bank, 242 U. S. 600, 602, 61 L. Ed. 518, 519, 37 S. Ct. 236; Bruce v. Tobin, 245 U. S. 18, 19, 62 L. Ed. 123, 124, 38 S. Ct. 7; Matthews v. Huwe, 269 U. S. 262, 264, 70 L. Ed. 266, 267, 46 S. Ct. 108.

Masterson v. Herndon (Masterson v. Howard) 10 Wall. 416, 417, 19 L. Ed. 953, 954, held—'It is the established doctrine of this court that in cases at law, where the judgment is joint, all the parties against whom it is rendered must join in the writ of error; and in chancery cases, all the parties against whom a joint decree is rendered must join in the appeal, or they will be dismissed. There are two reasons for this: 1. That the successful party may be at liberty to proceed in the enforcement of his judgment or decree against the parties who do not desire to have it reviewed. 2. That the appellate tribunal shall not be required to decide a second or third time the same question on the same record. . . One of the effects of this judgment of severance was to bar the party who re-

fused to proceed, from prosecuting the same right in another action, as the defendant could not be harassed by two separate actions on a joint obligation, or on account of the same cause of action, it being joint in its nature.'

In Estis v. Trabue, 128 U. S. 225, 32 L. Ed. 437, 9 S. Ct. 58, an attachment was levied upon certain personality. After the return Estis, Doan & Co. claimed the property and they gave a forthcoming bond with two securities. The challenged judgment ruled 'that the plaintiffs recover of the claimants and C. F. Robinson and John W. Dillard, their sureties in their forthcoming bond, the sum of six thousand and three hundred dollars, together with the cost, (etc.).' This Court held—"The judgment is distinctly one against "the claimants, and C. F. Robinson and John W. Dillard, their sureties in their forthcoming bond," jointly, for a definite sum of money. There is nothing distributive in the judgment, so that it can be regarded as containing a separate judgment against the claimants and another separate judgment against the sureties, or as containing a judgment against the sureties payable and enforceable only on a failure to recover the amount from the claimants; and execution is awarded against all of the parties jointly. In such a case the sureties have the right to a writ of error. Ex parte Sawyer, 21 Wall. 235, 240, 22 L. Ed. 617, 619. It is well settled that all the parties against whom a judgment of this kind if entered must join in a writ of error, if any one of them takes out such writ; or else there must be a proper summons and severance, in order to allow of the prosecution of the writ by any less than the whole number of the defendants against whom the judgment is entered.'

Mason v. United States, 136 U. S. 581, 34 L. Ed. 545, 10 S. Ct. 1062. A postmaster and the sureties on his official bond were sued jointly. He and some of the sureties appeared and defended. The suit was abated

as to two of the sureties, who had died. The others defaulted, and the judgment of default went against them. On the trial there was a verdict for the plaintiff, whereupon July 14, 1886, judgment was entered against the principal and all the sureties. The sureties who had appeared sued out a writ of error to this judgment, without joining the principal or the sureties who had made default and the record came here. May 5, 1890, and after expiration of the two years within which the statute then permitted the suing out of such writs, the plaintiff in error moved to amend the writ by adding the omitted parties as complainants, or for a severance of the parties, and it was held that the motion must be denied and the writ of error be dismissed.

Hardee v. Wilson, 146 U. S. 179, 180, 36 L. Ed. 933, 13 S. Ct. 39, cited earlier cases and declared—'Undoubtedly the general rule is that all the parties defendant, where the decree is a joint one, must join in the appeal.' See also Davis v. Mercantile Trust Co., 152 U. S. 590, 38 L. Ed. 563, 14 S. Ct. 693; Maytin v. Vela, 216 U. S. 598, 601, 54 L. Ed. 632, 634, 30 S. Ct. 439; Hughes, Fed. Pr. sec. 6153.

The New York, 44 C. C. A. 38, 104 Fed. 561 (Court of Appeals, Sixth Circuit, October 13, 1900) is said to support the view that in the circumstances here presented summons and severance was unnecessary. The proceeding was a cause in admiralty. The surety upon a stipulation for release of the vessel did not join in the appeal. Upon motion to dismiss, the court said—'It is well settled that all parties against whom a joint judgment or decree is rendered must join in proceeding for review in an appellate court, or that it must appear that those who have not joined had notice of the application for the appeal or writ of error, and refused or neglected to join therein.' But it ruled that, though joint in form, the decree was separable in law and fact and, therefore, the surety was not a necessary party to the appeal."

Should it be urged that the decision above quoted from has reference to joint plaintiffs or petitioners, it is answered that the basic principle upon which the decision and its supporting authorities are predicated is that this Court will not review decisions of lower courts, Federal or State, unless all the necessary parties are before it.

Petitioner began this suit against respondent Thelen only (I Tr. p. 2). When the answer came in the defendant Buscher became a necessary and indispensable party thereto and the title of the case was changed (I Tr. pp. 58A-88). Thenceforth, defendant Buscher was a necessary and indispensable party, and in the decree he was adjudicated a joint owner with respondent Thelen of the properties involved herein (I Tr. pp. 107A-118). Thenceforth, defendant Buscher was a necessary and indispensable party to all subsequent proceedings. Neither his nor respondent Thelen's specific interests were determined in the decree. They are joint owners of the property rights en gross.

Since this Court cannot separate their respective interests and defendant Buscher is not a party to these proceedings this Court, under its decisions, will not review the decision of the Supreme Court of Montana affirming the trial court. In joint judgment or decree cases all parties interested must be brought into this Court before its juridiction, absolute or discretionary, may be exercised.

Hartford Acc. & Ind. Co.,
285 U. S. 169, 76 L. Ed. 685.

Since defendant Buscher has not been brought into this Court, neither respondent Thelen's rights nor defendant Buscher's rights, which are joint, may be determined herein.

## II

## The Decree of United States District Court For Wyoming Was Not Effective to Award Petitioner Title to or Interest in the Lands Involved Herein Situated in Toole County.

In the amended bill of complaint (III Tr. pp. 692-731) filed on January 20, 1930, in the United States District Court for the District of Wyoming (III Tr. p. 692) the petitioner in that court sought to terminate a joint adventure between him, one H. L. Lowe, who was not served with process and never appeared in the suit, and S. C. Ferdig and to have an accounting from Ferdig and others including the respondent herein. The bill of complaint sought to trace moneys claimed to have been paid by Wilson to Ferdig which were used in said joint adventure and to have Wilson declared to be the owner of one-third of sixteen thousand units of the Sylvester Oil Company, a common law trust, and to have the assets of that trust distributed pro rata in accordance with the units and that on the liquidation of the assets petitioner Wilson sought to be adjudged the owner of a one-third interest.

In the decree in the Wyoming Court, respondent Thelen

was dismissed out of the suit on the merits, and with his costs against the petitioner (I Tr. pp. 127-128). That decree was rendered on December 11, 1931 (I Tr. p. 128).

Before August 6, 1929, when the Wyoming suit was commenced, the lands involved herein had been sold by Toole County, Montana, on January 29, 1929, for delinquent taxes and struck off to the county (I Tr. p. 113). Later respondent, on May 6, 1931, to protect his own interests, purchased the certificate of tax sale from Toole County (I Tr. p. 113). Also, the Oil Well Supply Company on December 20, 1928, (I Tr. pp. 188-193), about nine months before the Wyoming suit was commenced, filed its lien against the lands in Toole County which lien was subsequently foreclosed on June 2, 1931 (I Tr. pp. 206- 213) and a sale of the lands was made July 10, 1931, (I Tr. pp. 214-216) by the sheriff of Toole County under the decree on July 10, 1931 at which sale respondent became the purchaser (I Tr. p. 215).

At the time the Wyoming decree was rendered the tax sale and the decretal sale had extinguished all alleged or claimed interests of petitioner in the lands involved herein in Montana.

The Supreme Court of Montana in its opinion (III Tr. pp. 675-680), affirming the trial court's findings of fact and decree, expressly held, as did the trial court, that Thelen acted in good faith and had the legal right to obtain the tax certificate from Toole County and to purchase at decretal sale. Sheriff's deed to the lands,

pursuant to the decretal sale, went to respondent Thelen on September 20, 1932 (I Tr. pp. 216-220).

Petitioner did not commence this action until June 15, 1933 (I Tr. p. 2), and never made any claim upon respondent for any interest in the land prior to the time the original complaint in this suit was filed (II Tr. pp. 338-339).

Under the law of Montana, oil leaseholds and other interests in oil lands such as royalties are real property.

Homestake Exploration Corp. v. Schoregge,
81 Mont. 604, 264 Pac. 388.

Suits and actions to recover such real property or an estate or an interest therein or for the determination, in any form, of such right or interest must be commenced in the county wherein such real property is situated.

Section 9093, Revised Codes of Montana, 1935;

McKinney v. Mires,
95 Mont. 191, 26 Pac. (2d) 169.

A purchaser at execution or decretal sale becomes the owner of the property as of the date of sale, subject only to the right of redemption within one year after the date of the sale.

Section 9441, Revised Codes of Montana, 1935;

McQueeney v. Toomey,
36 Mont. 282, 92 Pac. 561.

Respondent Thelen became the owner of the land under the decree in Oil Well Supply Company vs. Ferdig Oil Company on July 10, 1931 (I Tr. pp. 206-213).

It seems obvious, therefore, that the Wyoming decree could not possibly have the effect contended for by petitioner of establishing any interests in the petitioner in and to the lands involved herein. The Wyoming Court had no jurisdiction of the lands, and any and all interest claimed or asserted by petitioner had been extinguished more than five months before the Wyoming decree was rendered. Moreover, respondent was dismissed out of the Wyoming Court on the merits.

The Supreme Court of Montana affirming the trial court of Toole County held that the Wyoming suit was a local action and any decree it rendered in such action could not determine that petitioner had any interest in the lands in Montana involved herein.

That rule is well established.

15 C. J. 472;

14 Am. Jur. p. 430-432;

7 R. C. L. 1059;

Ellenwood v. Marietta Chair Co.,
158 U. S. 105, 39 L. Ed. 913;

Carpenter v. Strange,
141 U. S. 87, 35 L. Ed. 640;

Brach v. Moen,
(8th C. C. A.) 4 Fed. (2d) 786;

Shell Petroleum Co. v. Moore,
(5th C. C. A.) 46 Fed. (2d) 959.

Petitioner does not contend that respondent Thelen was a party to any contract of joint adventure or otherwise between petitioner Wilson, H. L. Lowe and S. C. Ferdig.

Largely, the cases cited in petitioner's brief have to do with enforcing the cancellation of contracts but none of them go to the point involved in this case of holding that without any contractual relationship the Court in a foreign jurisdiction may determine interest in lands which can not be subjected to the jurisdiction of the foreign court.

Hence, it is obvious that the decisions cited in petitioner's brief along that line are not in point in this case.

## III

### No Federal Question is Involved Herein

The sole basis of the claim of petitioner in the trial court and Supreme Court of Montana and here, is that the trial and Supreme Courts of Montana did not accord full faith and credit to the Wyoming judgment.

Let it be remembered that at delinquent tax sale in Toole County, Montana, on January 29, 1929, nearly six months before the Wyoming suit was filed, Toole County had become the owner of the lands involved herein by acquiring the same through tax proceedings.

Let it further be emphasized that at the time the Wyoming suit was commenced, petitioner herein had not and never thereafter did redeem said lands from the tax sale.

Let it further be remembered that on December 20, 1928, the Oil Well Supply Company had filed its lien upon the lands involved herein, which lien was subsequently, on June 2, 1931, foreclosed, but which lien

existed and was valid for nearly eight months prior to the commencement of the Wyoming suit.

It is absurd to suppose that the Wyoming Court undertook, by the decree which is in the record herein, to deprive Toole County, Montana, of its title acquired under tax proceedings or to deprive the Oil Well Supply Company of its valid lien against the property herein involved when neither the tax proceedings nor the lien nor respondent's title acquired through the foreclosure of lien proceedings and through tax proceedings instituted by Toole County were before the Wyoming Court.

The Supreme Court of Montana agreed with us when we pointed out that the Wyoming Court could not possibly have entered any decree which would establish petitioner's alleged one-third interest in the lands, which are the subject matter of this suit, because Toole County and the Oil Well Supply Company, whose interests were prior to those of petitioner Wilson, were not before the Wyoming Court and at the time the Wyoming Court rendered its decree, all possible interests of the petitioner Wilson in and to the lands in Toole County, Montana, had been extinguished and the petitioner Thelen was the owner of such lands freed of any claim of petitioner at the time the Wyoming decree was entered.

Moreover, the declaration of trust of the Sylvester Oil Company, out of which petitioner Wilson contends his rights arose, expressly provides that no unit holder of the Sylvester Oil Company who bound himself by all of the terms and provisions of the declaration of trust

(I Tr. pp. 43-52), shall have any legal title to the trust property, real or personal, held from time to time by the trustee and should have no equitable estate in the lands and appurtenances belonging to the trust property, but that his or her interest should be only an interest in the money to arise from the sale or other disposition of the property made by the trustee (I Tr. p 50).

The amended bill of complaint did not seek to have a one-third interest in the lands involved herein decreed to petitioner Wilson, nor does the decree attempt to determine the extent and descriptions of the lands involved herein. In fact, the decree of the Wyoming Court is merely interlocutory, authorizing an accounting as against all of the defendants, except the respondent Thelen, who was dismissed out of the suit and Lowe and Cody Petroleum Company. That decree never has had any effect anywhere other than as an interlocutory decree. Petitioner Wilson herein did not follow up the advantage he had by such decree by taking the steps the decree authorized and subsequently obtaining a final decree.

Upon these facts, we can find no principles upon which petitioner Wilson may now contend that any interest in the lands involved in this case was established by such decree, because the decree itself does not attempt to establish any interest in the lands in Toole County but does provide a method for the termination of the alleged joint adventure.

However, in plaintiff's complaint in this case, in the

trial court (I Tr. pp. 2-50), petitioner tendered the issue of joint adventure to be litigated in the District Court for Toole County. Issues were joined on the formation of such joint adventure and were found in favor of the respondent Thelen and defendant Buscher by the trial court.

When that amended complaint was drawn by the same counsel who appear in this proceeding, they would not have tendered an issue of joint adventure between petitioner, Ferdig and Lowe unless they thought that such issue could be litigated in the court in which the issue was tendered by the petitioner.

In these circumstances, the clause of the Federal Constitution which requires full faith and credit to be given in each state to the records and judicial proceedings of every other state, is subordinate to the rule that the courts of one state are without jurisdiction over title to lands in another state. Obviously, the full faith and credit rule can not apply to records and proceedings of courts of another state which do not have jurisdiction to render a decree establishing title to land in another state.

14 Am. Jur. Sec. 238, pp. 430-432;

Lindsley v. O'Reilly,
50 N. J. Law 366, 15 Atl. 379;

Ophir Silver Min. Co., v. Superior Court,
147 Cal. 467, 82 Pac. 70;

Sharp v. Sharp,
65 Okla. 76, 166 Pac. 175;

Fall v. Estin,
215 U. S. 1, 54 L. Ed. 65.

In the last cited case, the rule is succintly stated by this Court as follows:

> "But this legislation does not affect the doctrine which we have expressed, which rests, as we have said, on the well-recognized principle that, when the subject-matter of a suit in a court of equity is within another state or country, but the parties within the jurisdiction of the court, the suit may be maintained and remedies granted which may directly affect and operate upon the person of the defendant, and not upon the subject-matter, although the subject-matter is referred to in the decree, and the defendant is ordered to do or refrain from certain acts toward it, and it is thus ultimately but indirectly affected by the relief granted. In such case the decree is not of itself legal title, nor does it transfer the legal title. It must be executed by the party, and obedience is compelled by proceedings in the nature of contempt, attachment, or sequestration. On the other hand, where the suit is strictly local, the subject-matter is specific property, and the relief, when granted, is such that it must act directly upon the subject-matter, and not upon the person of the defendant, the jurisdiction must be exercised in the state where the subject-matter is situated. 3 Pom. Eq. Jur. Sections 1317, 1318, and notes."

The cases relied upon in petitioner's brief for writ of certiorari herein do not differ in any manner from the excerpt above set forth. However, this is not a case wherein respondent Thelen in the District Court of Wyoming was ordered, commanded, or directed by that Court to do anything.

The fatal defect in petitioner's contention in the trial court, the Supreme Court of Montana, and here, is the fact that the Wyoming Court did not adjudicate as be-

tween Thelen and petitioner, any rights whatsoever. When that Court dismissed Thelen out of the case pending before it on the merits, it had no further jurisdiction over him.

Repeatedly, we have pointed out in this lengthy litigation and with success in the trial court and in the Supreme Court of the State of Montana, that petitioner had simply overlooked or ignored the fundamental principles upon which a decree of a foreign jurisdiction might be given effect under the Federal Constitution. Petitioner's counsel have refused to recognize the fact that the Wyoming Court did not direct or command respondent Thelen to do anything. Notwithstanding that plain principle, petitioner loads down his brief with cases wherein foreign courts have commanded a party to a suit who was before the court to do certain things concerning real estate in other jurisdictions. But as was said by this Court in Fall v. Estin, even though a party was ordered to do, or refrained from doing such acts, still no legal title was transferred from one party to another by such order or decree.

Thus, it is apparent that even though all parties necessary and indispensable to the determination of this case were before this Court, it would be without authority to issue a writ of certiorari to the Supreme Court of the State of Montana because there is no federal question involved herein.

## IV

## Petitioner Was Guilty Of Laches, And If No Other Grounds For Denial Of Relief To Him Existed He Could Not Prevail In The Montana Courts

The trial court found, concluded and decreed, upon this record, that petitioner Wilson had been and was guilty of laches in failing timely to assert his alleged claims now asserted (I Tr. pp. 109-118).

This decision was affirmed by the Supreme Court of Montana (III Tr. pp. 675-680).

The Wyoming decree was rendered December 11, 1931 (I Tr. p. 128). Until this suit was commenced June 15, 1933 (I Tr. p. 2), petitioner Wilson made no claims to the lands or any part thereof involved herein (II Tr. pp. 338-339).

The trial court found, and the Supreme Court of Montana, affirmed the finding (I Tr. p. 114, Finding XIX):

> "That between December 11, 1931, and the date of the institution of this action, Sam A. Wilson made no claim or demand whatsoever to these lands involved herein, and made no attempt to redeem said lands, but that said Sam A. Wilson stood by speculating as to the possible increase of value of said properties."

The trial court concluded and decreed, and the Supreme Court of Montana affirmed the conclusion and decree (I Tr. p. 115, Conclusion IV, and decree I Tr. pp. 116-118), that petitioner Wilson had been guilty of laches in delaying to give notice or to assert any claim whatever against respondent Thelen and defendant Buscher.

It is elementary that in litigation affecting oil properties, promptness in asserting claims is essential and when claims are not promptly and timely asserted they are lost.

Taylor v. Salt Creek Cons. Oil Co.,
(8th C. C. A.) 285 Fed. 532;

Robbins v. Elk Basin Con. Pet. Co.,
(D. C. Wyo.) 285 Fed. 179;

Abraham v. Ordway,
158 U. S. 416, 39 L. Ed. 1036;

Galleher v. Cadwell,
145 U. S. 368, 36 L. Ed. 738;

Twin-Lick Oil Co. v. Marbury,
91 U. S. 587, 23 L. Ed. 328;

Patterson v. Hewitt,
195 U. S. 309, 49 L. Ed. 214;

O'Hanlon v. Ruby Gulch Min. Co.,
64 Mont. 318, 209 Pac. 1062.

Determination of the question of laches applicable to oil properties is purely a question of local law.

In the determination thereof in this case no federal question arises.

Even though the Wyoming decree had awarded petitioner Wilson interests in oil lands in Montana, which it did not, petitioner's laches as above pointed out barred him from prevailing in this action.

## V

## CONCLUSIONS

We respectfully urge that we have established the following conclusions:

1. That the decree of the District Court of Toole County in favor of respondent Thelen and defendant Buscher is on its face a joint decree and since Buscher was not made a party hereto by petitioner within three months from March 18, 1940, and can not now be made a party hereto, this Court does not have all of the necessary and indispensable parties before it and will not undertake to adjudicate any asserted rights of the petitioner;
2. That the United States District Court for the District of Wyoming in Wilson vs. Ferdig, et al., was without authority or jurisdiction over the land involved herein which is situated in Toole County, Montana, and that the decree in Wilson vs. Ferdig, et al., rendered by the District Court of Wyoming did not establish any right in Wilson in and to any interest in the lands in Toole County, Montana;
3. That no occasion arose in the litigation in Montana to invoke the power of any of its courts to give full faith and credit to the Wyoming decree, which was rendered beyond jurisdiction, and, hence, no federal question is involved in this proceeding;
4. That petitioner Wilson was guilty of laches and therefore barred from asserting any claim or claims to the oil interests herein involved for the following reasons:
   (a) That more than five years elapsed after the 24th day of January, 1924, alleged

by him to be the date of the origin of the joint adventure between him, Ferdig and Lowe, before he commenced any action to have his interests determined;

(b) That after the decree rendered by the United States District Court in and for the District of Wyoming on December 11, 1931, at which time all of the rights, titles, claims, interest, equities and demands of the petitioner Wilson in and to the lands involved herein had been extinguished by tax proceedings by Toole County, Montana, and by lien foreclosure in Oil Well Supply Company vs. Ferdig Oil Company, petitioner took no steps promptly to assert his rights to the lands involved herein, gave no notice to the respondent Thelen and the defendant Buscher of his rights and thereby was guilty of laches and barred from asserting any rights whatever they may have been which he claims to have been determined by the United States District Court for the District of Wyoming;

(c) That until the 15th day of June, 1933, petitioner Wilson made no claim to, gave no notice of his claimed rights to the lands involved herein to the respondent Thelen and the defendant Buscher, and that since

the trial court found that he was standing by speculating on whether the oil lands involved herein were valuable, he has, by failure promptly to exercise his rights, become guilty of such laches as to bar him of any rights, particularly after respondent Thelen had expended more than nineteen thousand dollars without knowledge of said petitioner's claims to protect himself;

(d) That it would be inequitable and unconscionable now to allow or permit said petitioner to have any interests in and to the lands and the oil content thereof involved herein because of his laches.

We, therefore, respectfully urge that the petition for a writ of certiorari be denied.

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